Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 21st October, 2004 (Asvina 29, 1926)

SERIES II No. 30

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

—

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 16-3-2004 in reference No. IT/09/2004 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 28th April, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/9/2004

Workmen, Rep. by
All Goa Gen. Employees Union,
Mukund Bldg., 2nd Floor,
P. O. Box. 90,
Vasco-da-Gama, Goa. ... Workmen/Party I

V/s

M/s. Cosmed Analytical and
Central Services Pvt. Ltd.,
C.M.M. Bldg., Rua de Ourem,
Panaji-Goa. ... Employer/Party II

Workmen/Party I - Absent

Employer/Party II - Represented by Adv. Shri P. Chawdiker.

Dated: 16-3-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order dated 1-1-2004 bearing No. 28/26/2003--LAB/8 referred the following dispute for adjudication of this Tribunal.

> "Whether the closure declared by the management of M/s. Cosmed Analytical and Central Services Pvt. Ltd., Nirankal Road, Curti, Ponda, Goa, with effect from 01-11-2001 is total and effective?
>
> In any event what relief the following workmen are entitled to ?"

(1) Shri Khemu G. Gawde	Skilled Laboratory Assistant.
(2) Shri Manuel Fernandes	Skilled Laboratory Assistant.
(3) Shri Mohan S. Gawde	Skilled Laboratory Assistant.
(4) Shri Ramdas U. Palkar	Skilled Laboratory Assistant.
(5) Shri Subhas K. Naik	Sweeper.
(6) Shri Joaquim Dias	Sweeper.
(7) Shri Guru B. Gaonkar	General Attendant cum Laboratory Assistant.
(8) Shri Anil C. Shirodkar	Laboratory Assistant.
(9) Shri Suryakant Palkar	Sweeper.

2. On receipt of the reference a case was registered under No. IT/9/2004 and registered A/D notice was issued to the parties requiring them to appear before this Tribunal on 10-2-2004 at 10.30 a.m. Both the parties were duly served with the said registered A/D notice. One Shri A. Kaulekar appeared on behalf of Shri P. Goankar for the Workmen/Party I (for short, "Union") and prayed for time to file statement of claim. Adv. Shri D. Naik appeared on behalf of the Employer/Party II (for short, "Employer"). Hence the case was adjourned to

2-3-2004. However on this date none appeared on behalf of the Union and hence no statement of claim came to be filed on behalf of the Union. Adv. P. Chaudiker, representing the employer submitted that he does not want to file any written statement and prayed that award be passed against the Union.

3. The reference of the dispute was made by the Government at the instance of the union since they challenged the closure declared by the employer w.e.f. 1-11-2001 and contended that the closure is not total and effective and the workmen named in the reference (for short 'workmen') are entitled to relief. It is the Union who had raised the industrial dispute. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. In the present case the dispute was raised by the union that the closure declared by the management of the employer w.e.f. 1-11-2001 is not total and effective and that the workmen are entitled to relief. Since it was at the instance of the union that the reference of the dispute was made by the Government, the burden was on the Union to prove that the closure declared by the management of the employer is not total and effective and that the workmen are entitled to relief. The Union was given sufficient opportunity to appear before this Tribunal and file their statement of claim but the union did not appear and consequently no statement of claim was filed on their behalf. There is no material before me to hold that the closure declared by the management of the employer w.e.f. 1-11-2001 is not total and effective and that the workmen are entitled to relief. I, therefore, hold that the union has failed to prove that the closure declared by the management of the employer w.e.f., 1-11-2001 is total and effective or that the workmen are entitled to relief.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the closure declared by the management of the employer w.e.f. 1-11-2001 is total and effective. I further hold that the workman are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 19-4-2004 in reference No. IT/81/89 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 14th May, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/81/89

Shri Nevis P. Mascarenhas,
Rep. By Shri P. Gaonkar,
General Secretary, Gomantak
Mazdoor Sangh, Driver Hill,
Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s. Goa Steel Rolling Ltd.,
Bicholim-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri B. Harmalkar.

Employer/Party II - Represented by Adv. Shri A. Nigalye.

Dated: 19-4-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14/1947), the Government of Goa by order dated 19-10-89 bearing No. 28/55/89-LAB referred the following dispute for adjudication of this Tribunal.

> "Whether the action of the management of M/s. Goa Steel Rolling Mills Private Limited, Bicholim, Goa, in terminating the services of their workers Shri Nevis P. Mascarenhas, with effect from 12-11-1988 is legal and justified ?
>
> If not, what relief the workman are entitled to ?"

2. On receipt of the reference a case was registered under No. IT/81/89 and registered A/D, notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim at Exb. 2. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/ /party II (for short, "employer") as an electrician from 7-12-1987 and his services were confirmed with effect from 7-6-1988 by letter dated 16-6-1988. That the workman went on leave with effect from 26-9-1988 for a period of eight days and ESI certificate dated 3-10-1988 was submitted to the employer intimating that the workman was still under treatment. That on 12-12-1989 the workman reported for duties along with the medical certificates and the fitness certificate dated 11-12-1988 from ESI but he was informed that his name was struck off from the muster roll from 12-11-1988 and as such he was not allowed to resume duties. That the workman replied to the letter of the employer on 21-12-1988 and requested that his absence period be treated as sick leave on considering the medical certificate and he may be allowed to resume his duties. That since the employer did not consider the request of the workman, by letter dated 15-1-1989 he raised dispute before the Asst. Labour Commissioner, Mapusa and the conciliation proceeding held by him resulted in failure. The workman contended that striking off his name without conducting domestic inquiry amounts to his dismissal from service. The workman contended that striking off his name from muster roll without giving him opportunity to defend himself amounts to violation of the principles of natural justice. The workman contended that the termination of his services by the employer amounts to illegal retrenchment. The workman therefore claimed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that the workman was issued registered A.D. letter dated 8-10-1988 for his absenting from duties from 5-10-1988 without proper sanctioning of leave. The employer stated that the workman was asked to submit medical certificate and also to communicate his Bombay address for further communication, but, the said letter dated 8-10-1988 was returned to the employer by postal authorities, unserved. Employer stated that by another registered A.D. letter dated 26-10-1988 the workman was advised to resume his duties and to submit his written explanation on or before 7-11-1988 but this letter was also returned unserved. The employer stated that since there was no communication from the workman from 6-10-1988 a letter dated 12-11-1988 was sent to the workman mentioning therein the various steps taken by the employer and he was informed that in the absence of any communication from him it would be presumed that the workman was not interested in employment and he had voluntarily abandoned the services. The employer stated that the workman approached the employer for the first time on 12-12-1988 with a medical certificate from ESI after his absence from 5-10-1988 when the employer had already taken the decision vide letter dated 12-11-1988. The employer stated that the decision was taken vide letter dated 12-11-1988 after making efforts to give opportunity to the workman to explain his case. The employer denied that its action in striking off the name of the workman from the muster roll is without giving him opportunity to defend himself and that it amounts to violation of the principles of natural justice. The employer stated that as per the certified standing orders if a workman remains absent without prior written permission from the management for ten consecutive days or more he shall be deemed to have left the services of the company from the day succeeding to such tenth day. The employer denied that its action in striking off the name of the workman from the muster roll is illegal and unjustified. The employer denied that the workman is entitled to any relief.

4. On the pleadings of the parties issues framed at Exb. 6 and thereafter the evidence of the workman was recorded. After the evidence of the workman was recorded the employer examined one witness by name Mr. Mahesh Alvi. At the stage when his cross examination was partly recorded the employer amended the written statement twice. By way of amendment, the employer took the defence that the workman was gainfully employed and also that its factory at Bicholim is closed from 31-12-2000. Additional issues were framed in that respect. When the case was fixed for the continuation of the cross examination of the employees witness Mr. Alvi, the parties submitted that they are trying to arrive at an amicable settlement. Accordingly the parties appeared on 13-4-2004 and filed the terms of settlement dated 13-4-2004 at Exb. 34. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties. On behalf of the workman the terms are signed by his wife Mrs. Christie Mascarenhas who has been duly authorized by the workman to sign the terms of settlement on his behalf and accept the amount vide letter of authority dated 7-4-2004 issued in her favour by him. On behalf of the employer the terms of settlement are signed by its Director, Shri Kundan Kumar Shetye. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore

accept the submission made by the parties and pass the consent award in terms of settlement date 13-4-2004 Exb. 34.

ORDER

1. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I a sum of Rs. 57,120/- (Rupees fifty seven thousand one hundred and twenty only) in full and final settlement of his claim in the above Reference No. IT/81/89.

2. The aforesaid sum of Rs. 57,120/- (Rupees fifty seven thousand one hundred and twenty only) shall be paid by the Employer/Party II to the Workman/Party I in six equal monthly installments beginning from May, 2004 & ending in October, 2004. Each of the said installments shall be paid in the manner in Clause No. 3 hereinbelow.

3. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit, Bicholim Branch:-

Cheque No.	Date which the cheque bears	Amount
09137	15-05-2004	Rs. 9,520=00
09138	15-06-2004	Rs. 9,520=00
09139	15-07-2004	Rs. 9,520=00
09140	15-08-2004	Rs. 9,520=00
09141	15-09-2004	Rs. 9,520=00
09142	15-10-2004	Rs. 9,520=00
		Rs. 57,120=00

The Workman/Party I admits and acknowledges the receipts of the aforesaid cheques.

4. The parties hereby declare that their dispute in Reference No. IT/81/89 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim, and/or demand of whatsoever nature against each other.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 13-4-2004 in reference No. IT/17/91 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 14th May, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/17/91

Shri Premanand S. Amonkar,
H. No. E-315,
Rumadamol, Housing Board,
Post Navelim,
Salcete-Goa. ... Workman/Party I

V/s

M/s. Pradeep Enterprises,
P. O. Box No. 136,
V. N. Naik Road,
Margao-Goa. ... Employer/Party II

Workman/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri M. S. Bandodkar.

Panaji, dated: 13-4-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated April 4, 1991 bearing No. 28/7/91- -LAB referred the following dispute for adjudication by this Tribunal.

> "Whether the action of the management of M/s. Pradeep Enterprises, Margao, in transferring Shri Premanand S. Amonkar, Accounts Assistant from Arlem, Margao to Sanquelim with effect from 2-4-1990, is legal and justified ?
>
> If not, to what relief the workman is entitled to ?"

2. On receipt of the reference a case was registered under No. IT/17/91 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Union") filed its statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union are that the Employer/Party II (for short, "Employer") who is the sister concern of M/s. Narcinva Damodar Naik is engaged in the business of selling spare parts and it has depots at Tisk, Palem, Mapusa, Panaji, Bicholim, Curchorem and Sanquelim and the head office at Margao Goa. That the workman Shri Premanand Amonkar (for short, 'Workman') joined the services of the employer as Accounts Assistant on 1-11-77 and he was confirmed in service vide letter dated 1-6-78. That the workmen of the employer are the members of the union i.e. Goa Trade & Commercial Workers Union. That in the year 1989 the union submitted charter of demands demanding improvement in wages and other service

conditions for workmen. That with a view to break the unity of the workers the employer prepared its own terms of settlement and displayed them on the notice board which terms were not acceptable to the workers. That the employer tried to obtain the signature of the workmen individual on the copy of the settlement as a token of having accepted the said terms of settlement under the threat of transfer, dismissal and harassment, obtained the signature of some workmen on the said settlement. That on 28-2-90 the Asst. Personnel Manager Mr. Nestor Gomes came to the Accounts Department and after meeting the Manager Mr. Shet called the workmen one by one and asked them to sign on the last page of some papers purporting to be the wage settlement but the workmen refused to do so. That thereafter in the last week of March, 1990 Mr. P. Naik the partner of the employer enquired with the workman as to why he refused to sign the papers and threatened that if he did not sign he would be provided a table and a chair in the toilet and would be made to sit there and he further told him that he can be harassed by other means like transfer in the other establishment, making him sit alone in the godown etc.; That however, the workman told that he would not sign the papers without knowing the papers as a result of which he was subjected to harassment. That on 28-3-90 when the workman reported for duty he found that his chair was removed and when he enquired with the Personnel Manager he was told that his services were not required and when he insisted that he should be given in writing he was provided with a table and chair in one corner without any work. That as a sequel to not signing the settlement the workman was issued a letter on 26-3-90 dated 24-3-90 stating that he was transferred from Margao to Sanquelim w.e.f., 2-4-90. That by reply dated 28-3-90 the workman informed the employer that he was working at the Margao Branch for nearly 13 years; that there was no job of accounts or accounts assistant at Sanquelim depot; that Sanquelim depot was not in existence when he was appointed; that he was transferred to victimise him because he had refused to sign the papers purported to be wage settlement and therefore he requested to withdraw the said transfer letter 23-4-90 but the employer did not agree to do so. That thereafter the Union by letter dated 16-4-90 requested the employer to reconsider its decision and withdraw the said transfer letter as it was malafided, illegal and unjustified. That the employer did not reply to the said letter but by letter dated 3-5-90 again asked the workman to report for work at Sanquelim. That the workman by letter dated 5-5-90 again requested the employer to reconsider its decision but since there was no positive response from the employer, the Union raised industrial dispute before the Dy. Labour Commissioner, Margao, vide letter dated 13-6-90. That the conciliation proceedings held by the Dy. Labour Commissioner, ended in failure. The Union contended that the transfer of the workman to Sanquelim is illegal and unjustified on the following grounds namely it is by way of victimisation or refusing to sign the settlement prepared by the employer; Sanquelim depot does not have the post of accounts assistant; the Sanquelim depot was not in existence when the workman joined the services on 1-11-1977; and it is malafided. The Union therefore prayed that it be held that the action of the employer in transferring the workman at Sanquelim from 2-4-90 is illegal and unjustified and the same be set aside.

3. The employer stated that the reference is bad in law not maintainable because the dispute referred is not an industrial dispute within the meaning of Sec. 2(k) of the Industrial Disputes Act, 1947 and also because the Government did not apply its mind while making the reference. The employer admitted that it is dealing in the business of selling spare parts having depots all over Goa and one of them at Sanquelim. The employer stated that since the person working at Sanquelim had informed that the work at Sanquelim depot had increased and that it was not possible for him to cope up with the work alone, the management took a bonafide decision to transfer the workman at Sanquelim to do the work as was being done by him. The employer stated that the transfer order was issued to the workman bonafidely as the conditions of service i.e., the appointment letter and the decision was taken due to exigency of work. The employer stated that inspite of the opportunity given the workman refused to attend the work at transferred place and therefore a show cause notice/charge sheet was issued to him. The employer stated that a domestic enquiry was held against the workman inspite of the said charge sheet and the Inquiry Officer submitted his findings holding that the charges levelled against the workman were proved which findings were accepted by the management and by letter dated 4-9-91 the workman was asked to report at the transferred place by 20th September, 91 which he refused. The employer stated that since their workmen had raised the dispute during the pendency of the enquiry proceedings, the Dy. Labour Commissioner should not have entertained the dispute and referred the same to this Tribunal for adjudication. The employer stated that the above said action of the Government is without jurisdiction. The employer stated that it is a separate legal entity and denied that it is the sister concern of M/s. Narcinva Damodar Naik. The employer denied that all of its workers are the members of Goa Trade & Commercial Workers Union. The employer stated that it is not aware of any charter of demands sent to the employer in the year 1989. The employer stated that since no charter of demands was sent to the management by the union the question of employer trying to break the unity of the workers did not arise. The employer denied that the management had any time obtained to signature of some workers on the terms of settlement or that Mr. P. Naik asked the workman to sign papers and told him that if he did not do so he would be provided with a table and chair in the toilet. The employer denied that the workman was harassed or that his chair was removed or that Mr. Rege informed that he would be provided with a chair in the corner. The employer stated that the transfer of the workman was bonafide due to business exigencies and therefore the question of withdrawal of the transfer order did not

arise. The employer stated that fair opportunity was given to the workman to report for duties at Sanquelim depot but he failed to do so. The employer stated that as per the appointment letter issued to the workman the management had right to transfer the workman and his transfer is bonafide and due to business exigencies. The employer denied that the transfer of the workman is illegal and unjustified. The union thereafter filed rejoinder at Exb. 5.

4. On the pleadings of the parties issues were framed at Exb. 8.

1. Does Party I prove that the order of his transfer from Arlem Margao to Sanquelim with effect from 2-4-1990 is not legal and justified for the reasons stated in his statement of claim ?
2. Does Party II prove that there is no industrial dispute as contemplated under the Industrial Disputes Act, and hence the present reference is not maintainable ?
3. Does Party II proves that this Tribunal has no jurisdiction to adjudicate the dispute raised by Party I ?
4. Whether Party I workman is entitled to any relief ?
5. What award or order ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: In the negative.
Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: As per order below.

REASONS

6. *Issue Nos. 2 and 3:* Both these issues are taken up first because they are relating to the very maintainability of the reference. Adv. Shri Bandodkar, the learned Advocate for the employer submitted that the issue Nos. 2 and 3 are over lapping. He submitted that this Tribunal has no jurisdiction to adjudicate the dispute raised by the union because there was no industrial dispute which was existing as on the date when the dispute was raised by the union on the issue of transfer before the employer vide letter dated 16-4-90 Exb. 12 and before the Asst. Labour Commissioner vide letter dated 13-6-90 Exb. 15. He submitted that the employer had issued a charge sheet dated 23-6-90 to the workman Shri Amonkar because he had not reported at the place where he was transferred and he had remained absent from duty. He submitted that an enquiry was pending against the workman in respect of the charge sheet issued to him and therefore he should have waited till the outcome of the said enquiry and thereafter ought to have raised the dispute, depending, upon the outcome of the enquiry. I do not find any substance in the objection raised by the employer. The dispute which has been raised by the union on behalf of the workman is regarding the transfer of the workman from Arlem-Margao to Sanquelim. The contention of the union is that the said transfer is illegal and unjustified. Sec. 2(k) of the Industrial Disputes Act, 1947 defines "industrial disputes". As per the said definition industrial dispute means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non employment of the terms of the employment or with conditions of labour, of any person. Transfer of a person from one place of work to another is connected with the employment of that person and therefore if according to that person his transfer is illegal and unjustified he is entitled to raise a dispute in that respect and such a dispute will fall within the meaning of Sec. 2(k) of the Industrial Disputes Act, 1947 and it will be an industrial dispute. In the circumstances in the present case since according to the Union the transfer of the workman at Sanquelim was illegal and unjustified the Union was entitled to raise the dispute in that respect on behalf of the workman and it is an industrial dispute within the meaning of Sec. 2(k) of the Industrial Disputes Act, 1947. The charge sheet which was issued to the workman is an entirely different issue. It has nothing to do with the legality or illegality of the transfer. The charge sheet was issued to the workman because according to the employer the workman did not report at Sanquelim where he was transferred and remained absent without intimation or sanction of leave. The charge sheet issued to the workman and enquiry was held against him because according to the employer the workman had committed misconduct. The legality or illegality of the transfer did not depend upon the outcome of the enquiry. The outcome of the enquiry could be whether the workman was guilty of the charges of misconduct alleged against him in the charge sheet. The workman could challenge the order of transfer only by raising a dispute separately in that respect which has been done by the union on his behalf in the present case. Therefore there is no substance in the contention of the employer that no industrial dispute existed when the dispute was raised or that this Tribunal has no jurisdiction to adjudicate the dispute raised by the union. In the circumstances, I hold that the employer has failed to prove that there is no industrial dispute as contemplated under the Industrial Disputes Act, 1947 or that this Tribunal has no jurisdiction to adjudicate the dispute raised by the Union. I, therefore answer the issue No. 2 and 3 in the negative.

7. *Issue No. 1:* Shri Subhas Naik, representing the Union submitted that the transfer order issued to the workman is illegal and unjustified. He submitted that it is so because it is malafide; by way of victimisation for not signing the settlement; there was no post of Asst. Accountant at Sanquelim and there was no work for accountant; and the depot at Sanquelim came into existence after the workman was appointed on 1-11-1977. Shri Subhas Naik submitted that the employer's witness Shri Nester Gomes has admitted in his cross examination that the workman did not sign the settlement but all other employees signed the same. He

submitted that there is nothing in the letter of appointment which states that the workman could be transferred at any other establishment which was to come into existence in future. He submitted that the employer's witness Shri Nester Gomes has admitted in his cross examination that there was no post of Accountant at the Sanquelim depot where the workman was transferred. He submitted the evidence on record shows that the workman Shri Pradeep Amonkar was transferred at Sanquelim malafidely and by way of victimisation because he had refused to sign the settlement. In support of his contention that the transfer order is illegal and unjustified he relied upon the judgment of the Kerala High Court in the case of S. Veeriah Reddiar v/s Presiding Officer, Labour Court, Quilon, reported in 1971 II LLJ 127; the judgment of the Supreme Court in the case of National Radio Corporation v/s Their Workmen reported in 1963 I LLJ 282; the judgment of the Karnataka High Court in the case of Management of M/s. Nippani Urban Co-op. Bank Ltd., v/s Workmen reported in 1992 I CLR 854 and the Award dated 26-7-89 passed by this Tribunal in Ref. No. IT/5/88. Adv. Shri Bandodkar the learned Advocate for the employer submitted on the other hand that the Union has not produced the copy of the charter of demands nor the copy of the settlement which according to the union the employer was insisting on the signing of the same by the workers including the workman in the present case. He submitted that the letter of appointment issued to the workman provided for his transfer to any other establishment in Goa, and as such the transfer of the workman at Sanquelim godown was legal. He submitted that it is within the right of the employer to transfer his employee to any other place in case of business exigency and the employee cannot have any objection to the same. He submitted that in the present case the workman was transferred at Sanquelim depot because the person who was working there had stated in his letter dated 3-3-1990 that he cannot cope up with the work alone and had requested that a person should be sent who can write and maintain the accounts. He submitted that therefore on account of the business exigencies the workman was transferred at Sanquelim depot as his work was concerning the accounts. He submitted that the union has failed to prove that the transfer of the workman was malafide or that it was by way of victimisation because he had refused to sign the settlement. He submitted that the workman did not report at the place where he was transferred but he chose to remain absent from duties. He submitted that the workman ought to have first reported for work at Sanquelim depot and thereafter challenged the transfer order. He relied upon the judgment of the Supreme Court in the case of management of Cipla Ltd., v/s Jaya Kumar R. And another reported in 1998 I LLJ, 460 on the point that malafides are to be proved by the person who alleges the same. He also relied upon the judgment of the Supreme Court in the case of E. P. Royappa v/s State of Tamil Nadu and another reported in AIR 1974 SC on account of the exigencies of work is valid.

8. The dispute which has been raised by the union on behalf of the workman Shri Pradeep Amonkar is that his transfer by the employer from Arlem-Margao, Goa to Sanquelim depot with effect from 2-4-1990 is illegal and unjustified. One of the contentions which has been raised by the Union is that the depot at Sanquelim was not in existence at the time when the workman was appointed and therefore he could not have been transferred at the establishment which has come into existence subsequently. The union has relied upon the Award dated 26-7-89 of this Tribunal passed in Ref. No. IT/5/88. I have gone through the said Award. In the said award after considering the judgment of the Supreme Court reported in 1961 (1) LLJ 262 and AIR 196 SC 650, the Tribunal held that there is no inherent right in the employer to transfer his employee to another place where he chooses to start his business subsequent to the date of his employment. The Tribunal held that there should be an express term of contract of service between the employer and the employee that the latter should serve in any other concern etc. Therefore what is relevant is the appointment letter issues to the workman. The appointment letter of the workman dated 1-11-1977 has been produced at Exb. 7. In this letter of appointment at clause 5 it is cleary mentioned that the services of the workman are transferable to any of the establishment of the employer in the territory of Goa without any extra remuneration if so required by the employer. Thus, in the appointment letter itself there is an express term that the workman could be transferred to any of its establishment of the employer in the territory of Goa if the employer so required. This transfer was not restricted to the only existing establishments of the employer as on the date of the appointment of the employer but it could be to any other establishment which came into existence subsequently. This being the case the Award of this Tribunal in ref. No. IT/5/88 is not applicable to the workman because his appointment letter dated 1-11-77 provided for the transfer of the workman to any other establishment of the employer in the Territory of Goa. The judgment of the Kerala High Court in the case of S. Veeriah Reddiar (supra) relied upon by the union is not applicable to the facts in the present case because in that case the issue involved was whether a right of transfer is implied in the contract of service and the High Court held that it depends upon the particular nature of the employment. In the present case such a question did not arise as the transfer of the workman was provided for in the appointment letter itself. For the same reasons the judgment of the Karnataka High Court in the case of the Management of M/s. Nippani Urban Co-op. Bank Ltd., (Supra) is also not applicable to the present case. I, therefore hold that there is no substance in the contention of the union that because the Sanquelim depot came into existence subsequent to the date of appointment of the workman, he could not have been transferred at the said depot.

9. The other grounds on which the union has challenged the transfer of the workman are that the transfer is malafide and by way of victimisation because he had refused to sign the settlement and that there was no post of Accounts Asst. at Sanquelim Depot. The

Union has relied upon the judgment of the Supreme Court in the case of National Radio Corporation (supra) on the point of malafides and victimisation. In this case the Tribunal found that the evidence on record showed that the relationship between the management and the union was strained for a considerable time and the Management had held threats of closing the factory on account of strained between it and the union members. The tribunal held that the above evidence proved that the transfer of the workmen were made not bonafide and that they were made to victimise the concerned workmen and were the result of unfair labour practice. The Supreme Court held that the findings of the Tribunal were supported by evidence and that they were not perverse. The law that is laid down by the Supreme Court in the above case is that if the evidence on record shows that the employer acted malafidely in transferring the workman or so as to victimise him, the transfer order is illegal and not justified. In another case, that is, in the case of Hindustan Lever Ltd., v/s The Workmen reported in AIR 1974 SC 17 the Supreme Court has held that the transfer of an employee from one department to another is the discretion of the management provided the terms and conditions of service are not affected. The Supreme Court has further held that if the order of transfer is prima facie valid, the burden of proving that it is invalid lies on the workman and in the absence of any finding that the order of transfer was malafide or vitiated by unfair labour practice, the award of the court directing the re-posting of the workman in his original department was bad and should be set aside. Therefore what is required to be seen is whether the union has succeeded in proving that the transfer order is malafide and by way of victimisation for not signing the settlement by the workman as contended by the union.

10. In the present case the workman has examined only himself where as the employer has examined the Asst. Personnel Officer Mr. Nestor Gomes and the Dy. Labour Commissioner cum Conciliation Officer Mr. Bhikaro Naik. The workman stated in his deposition that the union submitted charter of demands in 1989 but there was no settlement. He stated that on 28-2-90 three officers of the company namely Shri Nestor Gomes, Shri S. V. Shet and Shri Pradeep Naik contacted him and requested him to sign settlement but he did not do so because he did not read the contents. He stated that in the 3rd week of March Mr. Pradeep Naik, the Partner of the employer of the firm called him at his cabin and threatened and asked him why he did not sign the settlement, and further told him that if he did not sign the settlement he will keep him in the toilet and he would harass him. He stated that on 26th March, 1990 he was issued transfer order Exb. 9. He produced the reply at Exb. 10 which he gave to the transfer order. He stated that thereafter the union sent a letter to the employer and he produced the same at Exb. 12. He stated that the employer did not send any reply to the said letter of the union but sent a letter to him dated 3-5-90 Exb. 13 and he produced his reply to the same at Exb. 14. In his cross examination he denied that the union had not submitted charter of demands to the employer. He stated that he does not have copy of the charter of demands. He admitted that because he did not join duties enquiry was held against him. He denied the suggestion that the three persons that is Nestor Gomes, S. V. Shet and Pradeep Naik did not contact him and ask him to sign settlement. He stated that he knows the names of two, three persons who are the union leaders and that he was not the union leader. He stated that none of the leaders were transferred. He stated that none of the members of the union signed the settlement. He denied the suggestion that he was transferred on account of exigencies as there was a demand for additional help to look after accounts.

11. The employer's witness Mr. Nestor Gomes stated in his deposition that by letter dated 3rd March, 1990 Exb. 16 Mr. Sham Govekar who was working at Sanquelim Depot as a Salesman had requested for posting one person at Sanquelim to look after accounts, and that the workman who was looking after the accounts section at Margao was transferred by letter dated 24th March, 1990 at Sanquelim to look after the accounts. He stated that inspite of the said transfer the workman did not obey the order, and did not report for duty on 2-4-90 or thereafter. He produced the letter dated 5-5-90 Exb. 16 written by the workman to the employer. He stated that no charter of demand was submitted by the union to the employer. He stated that a settlement was signed by the employer with its employees and the benefits given to the employees of N. D. Naik were extended to the employees of the employer. He stated that before the benefits were extended the employees were called in the canteen premises in the 2nd week of February, 1990 and they were explained about the terms and the conditions of settlement. He stated that the settlement was signed on 7th March, 1990 extending the benefits from 1st January, 1990. He denied that Mr. S. V. Shet, Pradeep Naik or he contacted the workman on 28-2-90 and requested him to sign the settlement. He stated that he had not seen Mr. Pradeep Naik, who is one of the partners of the employer firm, meeting the workman at any time. He stated that no threat was given to the workman by Pradeep Naik that if he did not sign the settlement he would keep him in toilet and harass him. In his cross examination he stated that at the time when the workman was transferred, one person was working at Sanquelim depot, as a salesman. He stated that in the establishment of the employer the workman was the only person who was working in the Accounts Department. He stated that in none of the depots there was any person who was working as an account and there was no accountant or Asst. Accountant working at Sanquelim depot. He stated that after the transfer of the workman one Mr. Mario was working in the Account Department. He stated that the draft of the settlement was prepared by the employer, and it was displayed on the notice board. He stated that the original of the settlement was kept on the table of the Pers. Manager Mr. Rege so that whichever employee wanted could sign the same. He stated that the settlement was signed by all the employees except the

workman. He denied that on 28-2-90 he went to the Account dept., and obtained the signature of all the employees on the settlement or that on that date he had gone to the workman with the settlement to obtain his signature and he refused to sign. He denied that the transfer order was issued to the workman because he refused to sign the settlement. He stated that he does not know the reasons why no one else was posted at Sanquelim after the workman refused to be transferred. The employer's other witness Shri Bhikaro Naik, The Dy. Labour Commissioner and the conciliation officer stated that he had received a letter dated 13-6-90 from the union raising the dispute on behalf of the workman and he produced the conciliation file at Exb. 21 colly. In his cross examination he stated that when the conciliation proceedings are pending before him, the employer cannot change the service conditions of the workman. He stated that the employer could not have transferred the workman when the conciliation proceedings were pending before him.

12. Though the case of the union is that it had submitted charter of demands to the employer in respect of which according to the union the employer had prepared the settlement to be signed by the employees, no copy of the charter of demands was produced by the union. The workman stated that he does not have the copy of the charter of demands. Since the demands were raised by the union on behalf of the workers, the union ought to have examined any of its office bearers to prove that charter of demands was submitted to the employer or produced the copy of the said charter of demands. The employer had denied that any charter of demands was submitted to it by the union. Therefore there is no evidence from the union to support its contention that charter of demands was submitted by it and a settlement was prepared by the employer to be signed by the employees. Moreover if the charter of demands was submitted by the union, the employer would not have prepared the settlement unilaterally and obtained the signatures of the employees on the same. The settlement would have been prepared by the union and the employer together and the same would have been signed by the officer bearers of the union and hence the question of obtaining signatures of the employees would not have arisen. The union therefore has failed to prove that a charter of demands was submitted to the employer and that in pursuance to the said demands a settlement was prepared by the employer. However there is an admission on the part of the employer that there was a settlement signed between the employees and the employer but this settlement was not pursuant to the charter of demands submitted by the union. According to the employer's witness Mr. Nester Gomes this settlement was signed by all the employees except the workman. There is absolutely no evidence from the union/workman to prove that the workman was contacted by Shri Nester Gomes, Shri S. V. Shet and Shri Pradeep Naik on 28-2-90 and he was requested to sign the settlement. There is also no evidence to prove that in the third week of March, 1990 Mr. Pradeep Naik called the workman in his cabin and asked him why he did not sign the settlement and further threatened him that if he did not sign the settlement he would be harassed and would be kept in toilet. The entire case of the union/ /workman is based on the contention that he was being forced to sign the settlement and because he refused to sign the same he was threatened that he would be harassed and his transfer at Sanquelim depot was the consequence of the said threat given. Thus according to the workman his transfer was malafide and by way of victimisation for not signing the settlement. Once the workman has failed to prove that he was being forced to sign the settlement and was threatened with harassment for not signing the settlement, it cannot be held that the transfer order was issued to the workman malafidely or as a matter of victimisation. According to the workman threat was given to him in the third week of March, 1990. Therefore if at all, the employer would have resorted to putting the threats into action after the third week of March, 1990. However, the employer has relied upon a letter dated 3rd March, 1990 written by Shri Shyam Govekar, the salesman at Sanquelim depot, wherein he has requested the employer to depute one person at Sanquelim depot to look after the accounts as he was unable to do so and he was likely to make mistakes in the accounts. This letter is in records of the enquiry proceedings Exb. 16 . This letter shows that the request for sending some person at Sanquelim depot to look after the accounts was made much earlier to the alleged giving of the threat to the workman. The union or the workman never disputed the said letter. The workman was transferred to the Sanquelim depot in pursuance to the request made by the salesman Mr. Govekar in the above said letter and he was informed by the employer about the same vide letter dated 30th March, 1990 which is contained in the records of the enquiry proceedings Exb. 16. The request which was made was for sending a person to look after and maintain the accounts. The employer's witness Shri Nestor Gomes has stated in his cross examination that the workman was the only person who was working in the Accounts Section of the employer. The workman has stated in his evidence that he was working as the Accounts Assistant. This being the case the only person who could be sent at Sanquelim Depot to look after and maintain the accounts was the workman. The workman in his cross examination has stated that the members of the union did not sign the settlement. There is no evidence from the union that the other employees who had not singed the settlement were also transferred by the employer or were harassed in some other way. Nor it is the case of the union that those who did not sign the settlement were transferred to the other depots. The workman in his cross examination has stated that none of the leaders of the union transferred by the employer. Therefore it does not stand to reason that only the workman would be transferred at Sanquelim Depot because he did not sign the settlement. The workman has produced his reply dated 29th March, 1990 Exb. 10 to the transfer letter dated 24th March, 1990 Exb. 9 issued to him. In this letter the objection which has been raised to the

transfer is that he is transferred to Sanquelim pursuant to his refusal to sign on a blank sheet of paper purported to be "wage settlement". In this reply the workman did not allege that he was being forced to sign the settlement or that he was threatened by Mr. Pradeep Naik that if he did not sign the settlement he would be kept in the toilet and he would be subjected to harassment. If the workman was really being forced to sign the settlement and was threatened he would have definitely stated so in his reply. But he did not speak a word about the same. From the said reply, the main grievance of the workman regarding the transfer appears to be that he was living with his family at Margao with two children for many years and if he is transferred his family life will be upset. There are contradictions in the reply dated 29th March, 1990 of the workman and the statement made by him in his deposition. In the reply dated 29th March, 1990 Exb. 10 the workman has stated that he refused to sign on a blank sheet of paper purported to be "wage settlement", whereas in his deposition the workman stated that he refused to sign the settlement because he did not read the contents. This means that the workman was not given blank sheet paper for signing as stated by him in his reply dated 29th March, 1990 Exb. 10. This is a major contradiction. In view of the above evidence it is difficult to believe that the workman was being forced to sign the settlement or that he was given threat of harassment and that his transfer to Sanquelim was because he had refused to sign the settlement. The employer's witness Mr. Nestor Gomes has stated in his cross that the draft of the settlement was displayed on the notice board. This statement of the witness has not been denied by the workman. Besides, this fact has been admitted by the union in the claim statement. Therefore all the employees were aware of the contents of the settlement. This being the case the statement of the workman that he did not sign the settlement because he did not read the contents cannot be believed, and accepted. In view of the evidence which is discussed above, I hold that the union/workman has failed to prove malafides or victimisation against the employer in transfering the workman at Sanquelim.

13. The union has raised the contention that there was no post of Accounts Assistant at Sanquelim depot and therefore the workman could not have been transferred there. The employer's witness Mr. Nestor Gomes has admitted in his cross examination that at Sanquelim depot there was no person who was working as Accountant or Asst. Accountant. The contention of the employer is that the workman was transferred at Sanquelim because of business exigencies. The employer's contention is that the salesman Mr. Govekar who was working at the Sanquelim Depot had requested to send a person to look after and maintain the accounts as he was unable to do so, and therefore the workman who was working in the accounts section was transferred at Sanquelim depot. The Supreme Court in the case of E. P. Royappa (supra) has held that transfer on account of exigencies of Administration is valid. In the case of Management of the Syndicate Bank Ltd., v/s The Workmen reported in AIR 1966 1283 the Supreme Court has held that it is the right of the employer to decide the necessity of transfer, but the transfer should not be malafide or for punishing the employee for his trade union activities. The Supreme Court has held that however the Tribunal should not reach the finding of malafide capriciously or on flimsy grounds but only if there is sufficient and proper evidence in support of the finding. In the case of Suresh S. Bhamre v/s Devendra Purshottam Shinde, reported in 2003 III CLR 382, the Bombay High Court has held that a person might be performing his duties to the satisfaction of the authorities, yet he can be transferred if the post held by him is transferable. The High Court held that since there was no breach of the statutory provisions nor the order was malafide, the transfer must be held to be legal and valid. The Madhya Pradesh High Court in the case of Ramesh Chandra Dhawal v/s Mr. P. State Road Transport Corporation & others reported in 2003 LLR 488 has held that a transfer of an employee from one place to another is an integral part of the service and is always regarded as an incidence of service, and that in fact it is attached as one of the conditions of a service contract. The High Court has held that a transfer order can be questioned if it shows some malafide intention but in such a case the employee has to make out a very case of malafide against a person responsible for transferring him. In the case of Bihari Lal Chauhan v/s Director of Factories, U. P. Kanpur and another reported in 2003 LLR 443, the Allahabad High Court has held that the transfer of an employee is an exigency of service and the court cannot ordinarily interfere with a transfer order. The Kerala High Court in the case of Chacko Samuel v/s Union of India and others reported in 2003 LLR 459 has held that transfer of an employee is an incidence of service and the station of posting has to be chosen by the employer and not by the employee. The High Court has held that claiming compassion by an employee in stalling his transfer that he was chronic diabetic and not physically fit to perform his duties has no bearing and he might choose to resign or take other steps. The High Court has further held that remaining on leave instead of complying with the transfer order does not reflect well on the employee's sense of discipline and hence initiating disciplinary proceedings against him for unauthorised absence was proper. The Supreme Court in the case of Gujrat Electricity Board and another v/s Atmaram Sungomal Poshari reported in 1989 (2) SCC 602 has held that no Government servant or employee of public undertaking has legal right for being posted at any particular place and that whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open for him to make representation to the competent authority for stay, modification or cancellation of the transfer order and if the order of transfer is not stayed, modified or cancelled, the concerned public servant must carryout the order of transfer and he has no justification to avoid or evade the transfer order merely on the ground of having made representation or on the ground of his difficulty in moving from one place to another.

14. In the present case it has been already held by me that the union/workman has failed to prove that the transfer of the workman at Sanquelim was malafide or to victimise him because he did not sign the settlement. The appointment letter issued to the workman shows that the services of the workman were transferable. The employer has produced documentary evidence namely the letter dated 3rd March, 1990 Exb. 16 which proves that the transfer of the workman at Sanquelim depot was on account of business exigencies. The workman was working in the accounts section and he was required to look after and maintain the accounts only, at Sanquelim depot where he was transferred. Merely because there was no post of Accounts Asst. At Sanquelim depot at the time when the workman was transferred, it does not mean that the workman could not have been transferred there. The transfer was due to business exigencies and the employer found it necessary to transfer the workman at Sanquelim depot because he was working in the Accounts Section and as such was the proper person to look after the accounts there. The employer is a private establishment and hence nothing prevented the employer from creating the post of Accounts Assistant at Sanquelim Depot at any time. It is an admitted fact that the workman did not report at the place of transfer that is at Sanquelim depot. The representation made by the workman by letter dated 29th March, 1990 Exb. 10 requesting for the withdrawal of the transfer order was rejected by the employer vide letter dated 5th April, 1990 Exb. 11. Therefore as per the law laid down by the Supreme Court in the case of Gujrat Electricity Board (supra) the workman was bound to join the duties at Sanquelim Depot but he did not do so. From the letter dated 29th April, 1990 Exb. 10, the main grievance of the workman about the transfer appears to be that he was living with his family at Margao with two children for many years and if he is transferred his family will be upset. As per the principles laid down by the Kerala High Court in the case of Chacko Samuel (supra) this cannot be a valid reason for stalling transfer. The statement of the employer's witness Shri Bhikaro Naik, the Dy. Labour Commissioner and the Conciliation Officer in his cross examination that the employer could not have transferred the workman when the conciliation proceedings were pending before him has no substance. This is because the workman was transferred by letter dated 24th March, 1990 and the conciliation proceedings were held by him after he received the letter dated 13-6-90 raising the dispute. The dispute which was raised was regarding the transfer only. Therefore, the statement of Mr. Naik that the workman could not have been transferred when the conciliation proceedings were pending before him has no meaning. In the light of what is discussed above, I hold that the Union/workman has failed to prove that the order of his transfer from Arlem Margao, Goa to Sanquelim with effect from 2-4-1990 is not legal and justified. I hold that the transfer is legal and justified. I, therefore answer the issue no. 1 in the negative.

15. *Issue No. 4:* Since it has been held by me that the transfer of the workman to Sanquelim depot is legal and justified, the workman is not entitled to any relief. I, therefore hold that the workman is not entitled to any relief and hence answer the issue no. 4 in the negative.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Pradeep Enterprises, Margao, in transfering Shri Premanand S. Amonkar, Accounts Assistant from Arlem-Margao to Sanquelim with effect from 2-4-1990 is legal and justified. It is hereby further held that the workman Shri Premanand S. Amonkar is not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 12-5-2004 in reference No. IT/30/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 1st June, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/30/2002

Shri Salvador Pacheco,
Rep. by Gen. Secretary,
Gomantak Mazdoor Sangh,
Shetye Sankul, 3rd Floor,
Tisk, Ponda-Goa. ... Workman/Party I

V/s

The Madgaon Consumers'
Co-operative Society Ltd.,
Laxmi Bldg.,
Comba, Margao-Goa. ... Employer/Party II

Workman/Party I - Represented by Shri P. Goankar.

Employer/Party II - Ex-parte.

Panaji, dated: 12-5-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29-4-2002 bearing No. 28/19/2002--LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. The Madgaon Consumers Co-perative Society Ltd., Margao, in terminating the services of Shri Salvador Pacheco, Weighman, with effect from 1-8-2001 is legal and justified ?

If not, to what relief the workman is entitled to?"

2. On receipt of the reference a case was registered under No. IT/30/2002 and registered A/D, notice was issued to the parties. In pursuance to the said notice the Workman-Party I (for short, "Workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed as a Jr. Weighman by Employer-Party II (for short, "Employer") vide appointment letter dated 1-8-1990 w.e.f. 1st August, 1990. That the employer terminated his services by letter dated 28-6-2001 w.e.f. 1-8-2001 and at the time of termination of his service he was not offered nor paid retrenchment compensation, gratuity, and other legal dues. That the workman represented before the employer that junior workers were still in employment and he being the senior workman his services should not be terminated and if still it is done it would be illegal and in violation of the provisions of the Industrial Disputes Act, 1947. That since the employer did not reply, he raised a dispute before the Labour Commissioner through the union by letter dated 5-7-2001, and the conciliation proceedings held by the Dy. Labour Commissioner, Margao, ended in failure. The workman contended that termination of his service is illegal and unjustified as the employer did not comply with the provisions of the I. D. Act, 1947. The workman contended that the dispute on charter of demands registered as ref. No. IT/79/96 was pending before this Tribunal for adjudication when his services were terminated and therefore employer ought to have obtained permission or approval by filing application before this Tribunal. The workman contended that he is unemployed from the date of termination of his service. The workman claimed that he is entitled to reinstatement in service with full back wages and continuity of service.

3. The employer though duly served with the registered A/D notice, did not appear and therefore the case was proceeded ex-parte against it on 22-8-2002. Subsequently the employer filed application dated 29-10-2002 for setting aside the ex-parte order which was not objected by the workman and therefore by order dated 29-10-2002, the order dated 22-8-2002 proceedings ex-parte against the employer was set aside and subsequently the employer filed the written statement at Exb. 5. The employer stated that due to the implementation of non rationing policy of controlled essential commodities by the Government of Fair Price Shops run and managed by the Co-operative Societies all over Goa including the Employer Society did not have any business transaction and due to stiff competition in the market and increase in the overhead expenses it was not economical and viable for the employer to run the Fair Price Shop and therefore the employer closed its Fair Price Shop including the shop where the workman was working. The employer stated that due to the stopping of the entire activities of the Fair Price Shop where the workman was working the employer was compelled to terminate the services of the workers working in the shop on account of closure. The employer stated that during the annual verification closing stock as on 2-4-2001 it was found that there was shortage of quantities of various commodities and since the workman was incharge and responsible for the shortage he was asked to reimburse the cost of the shortage amounting to Rs. 2206.53. The employer stated that inspite of the opportunity given the workman intentionally and deliberately did not refund the amount and used the said amount unauthorisedly for his personal gains. The employer stated that the workman was offered closure compensation subject to the payment of the dues of the Employer-Society by him. The employer further stated assuming that the workman is entitled to closure compensation if any the employer is ready and willing to pay the said amount to the workman and or deposit the said amount in the Court. The employer stated that the workman was the juniormost employee employed as weighman and his termination of service arising out of closure was in accordance with the provisions of law. The employer stated that since it is the case of closure the question of conducting any enquiry did not arise. The employer denied that the workman was not paid or offered any legal dues. The employer denied that the termination of service of the workman is illegal and or unjustified or that the employer violated the principles of natural justice or the provisions of Industrial Disputes Act, 1947. The employer stated that the reference No. IT/79/96 regarding the charter of demands has been already disposed of by this Tribunal on 11-7-2002. The employer stated that since it has closed its establishment permanently the workman is not entitled to any relief of reinstatement in service with full back wages and or continuity of service. The employer denied that the workman is unemployed or that he could not succeed in getting the job. The employer stated that the workman has purchased a goods rickshaw and he is engaged in the said business. The employer stated that the workman is not entitled to any relief. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the Party II terminated his services in violation of the provisions of Sec. 25G and 25H of the I. D. Act, 1947?

2. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 1-8-2001 is illegal and unjustified?

3. Whether the Party II proves that the termination of the services of the Party I is on account of the closure of fair price shop where the Party I was working?

4. Whether Party II proves that the Party I is self employed?

5. Whether the Party I is entitled to any relief?

6. What award?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: In the affirmative.
Issue No. 3: In the negative.
Issue No. 4: In the negative.
Issue No. 5: As per para 14 below.
Issue No. 6: As per order below.

REASONS

6. *Issue No. 1:* In the present case the employer did not participate in the proceedings from the stage when the case was fixed for the evidence of the workman. Adv. Shri Bandodkar who was representing the employer withdrew his appearance after giving proper notice to the employer and since none appeared on behalf of the employer on 15-3-2004, the case was proceeded ex-parte against them. Consequently there is evidence only on behalf of the workman and there is no evidence from the employer. The workman has examined only himself. The contention of the workman is that there is violation of the provisions of Sec. 25F and 25H of the Industrial Disputes Act, 1947 (for short, "I.D. Act") from the employer. Sec. 25G of the I.D. Act lays down the procedure for retrenchment to be followed by the employer. As per the said provision the junior most workman in the category is to be retrenched. The workman in his evidence has stated that he was employed as a weighman. He has not stated that besides him the employer had employed other persons in that category, that is, in the category of weighman. He did not state that he was the senior person working as a weighman when his services were retrenched nor he has led any evidence to prove that he was the senior person working as the weighman and that besides him there were other junior persons working as weighman. Therefore in my view the workman has failed to prove that there is violation of the provisions of Sec. 25G of the I.D. Act from the employer. Similarly the workman has contended that there is violation of the provisions of Sec. 25H of the I.D. Act, 1947 from the employer. Sec. 25H of the I.D. Act provides that when the employer proposes to employ any person after retrenching the workman, he has to offer re-employment to the retrenched workman first and if the retrenched workman offers himself for re-employment, he shall have preference over other persons. In the present case except for making a bare statement in the evidence that after termination of service the employer has employed new workers, no evidence has been produced by the workman to support his above statement. There is no evidence to show that the employer employed new worker after terminating the services of the workman. I therefore hold that the workman has failed to prove that there is violation of the provisions of Sec. 25H of the I.D. Act from the employer. In the circumstances I answer the issue No. 1 in the negative.

7. *Issue nos. 2 and 3:* Both these issues are taken up together as they are interrelated. It is an admitted fact that the services of the workman were terminated with effect from 1-8-2001. The notice of termination of service issued by the employer has been produced by the workman at Exb. W-2. It is the contention of the employer that the services of the workman were terminated on account of the closure of the fair price shop no. 2A where according to the employer, the workman was working. This is the defence which has been taken by the employer in the written statement. In the notice of termination of service dated 28-6-2001 Exb. W-2 also, the employer has given the reason for retrenching the services of the workman from 1-8-2001 being that because of severe competition from the open market, the non-rationing policy of the controlled essential commodities followed by the Government, overhead expenses etc., the employer has decided to close down the fair price shop no. 2A where the workman was working. The workman never accepted that the employer closed down the fair price shop no. 2A or any of its shops. This is also evident from the letter dated 5-7-2001 Exb. W-3 written by the Gomantak Mazdoor Sangh to the Dy. Labour Commissioner, Margao, raising the dispute on behalf of the workman. In this letter the union stated that while the services of the workman were retrenched illegally, the junior workers were still in the employment of the employer. In the rejoinder filed by the workman to the written statement of the employer the workman denied that the employer closed down its fair price shops. In view of this, issue no. 3 was framed casting the burden on the employer to prove that the services of the workman were terminated on account of the closure of the fair price shop where the workman was working. As mentioned earlier the employer after filing the written statement did not participate in the proceedings and allowed the case to proceed ex-parte against it. Consequently there is no evidence from the employer at all, and thus the employer has failed to discharge the burden cast on it. The employer has not led any evidence to prove that fair price shop no. 2A where the workman was working is closed. There is no evidence from the employer proving that any of its fair price shop is closed. I, therefore hold that the employer has failed to prove that the termination of the services of the workman is on account of the closure of the fair price shop where the workman was working. I therefor answer the issue no. 3 in the negative.

8. The workman has contended that termination of his services by the employer is illegal because he was not paid retrenchment compensation by the employer at the time when his services were terminated nor the employer filed approval application or permission application before the Tribunal because at the time when his services were terminated the dispute on charter of

demands being reference case no. IT/79/96 was pending before the Tribunal and the workman was interested and concerned in the said dispute. The question of paying retrenchment compensation arises if the termination of service amounts to "retrenchment". Sec. 2(oo) of the I.D Act, 1947 defines retrenchment as follows:

(oo) **"Retrenchment"** means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include;

(a) voluntary retirement of the workman ; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health"

9. In the present case admittedly the services of the workman were not terminated as a matter of punishment inflicted by way of disciplinary action nor the case of the workman falls within the exceptions laid down in Sec. 2(oo) of the Act. The Supreme Court in the case of Gammon India Ltd., v/s Shri Niranjan Dass reported in 1994 ISCC 509 has held that where the termination of service does not fall within any of the excluded categories, the termination would be ipso facto retrenchment. I therefore hold that termination of service of the workman amounts to retrenchment. The employer also in the notice dated 28-6-2001 Exb. W-2 has stated that the services of the workman are retrenched. Sec. 25F of the Industrial Disputes Act, 1947 lays down conditions for effecting retrenchment. As per said Section a person who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid one month's wages in lieu of notice and he has been paid compensation at the rate of 15 days average wage per each completed year of continuous service or any part thereof in excess of six months. Sec. 25B(2) of the Industrial Disputes Act, 1947 defines continuous service. It states that a person shall be deemed to be in continuous service under an employer for a period of one year, if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. It is therefore to be seen whether the workman in the present case had worked for 240 days.

10. The workman has examined himself. He has not been cross examined as the case was proceeded ex-parte against the employer and therefore the evidence of the workman, oral as well as documentary has gone unchallenged. The workman has stated in his deposition that he was employed with the employer from 1-8-1990. The employer has admitted this fact in its written statement. The workman has produced his appointment letter at Exb. W-1. This appointment letter states that the workman is employed as weighman from 1-8-1990. Therefore the employment of the workman with the employer as weighman from 1-8-1990 is proved. The workman has produced the notice dated 28-6-2001 at Exb. W-2 whereby he is informed that his services are terminated from 1-8-2001. This fact is also admitted by the employer in the written statement. The workman has stated in his deposition that he worked with the employer continuously from 1-8-1990 to 31-7-2001. There is no evidence on record to show that the workman was given any break in service during the period 1-8-1990 to 31-7-2001. Therefore it is proved that the workman was in continuous service of the employer from 1-8-1990 till the date when his services were terminated from 1-8-2001, that is, almost for a period of 11 years. Therefore the workman is well covered under the provisions of Sec. 25B of the I.D. Act, 1947 and consequently the provisions of Sec. 25F of the said Act applied to him. It has been held by me that the employer has failed to prove that the termination/retrenchment of the services of the workman was on account of the closure of the fair price shop where the workman was working. The Supreme Court in the case of M/s. Avon Services Production Agency Pvt. Ltd., V/s Industrial Tribunal has held that giving notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the provisions prescribing conditions precedent for valid retrenchment renders the order of termination invalid and operative. In the case of Gammon India Ltd., (Supra) the Supreme Court has held that in the absence of compliance with the requisites of Sec. 25F, the retrenchment bringing about the termination would be void ab-initio. In the present case one months notice was given to the workman. The workman however has stated in his deposition that he was not paid retrenchment compensation. The union, namely Gomantak Mazdoor Sangh, in its letter dated 5-7-2001 Exb. W-3 written to the Dy. Labour Commissioner, Margao had stated that the retrenchment is illegal because the provisions of the Industrial Disputes Act, 1947 were not complied with. In the statement of claim also the workman had taken the defence that the retrenchment compensation was not paid to him at the time of termination of his service. This being the case the burden was on the employer to prove that the retrenchment compensation was paid to the workman. There is however no evidence from the employer to prove that the retrenchment compensation was paid to the workman. Therefore, I hold that there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 from the employer and therefore the termination of service of the workman by the employer becomes illegal and unjustified.

11. The workman has also challenged the termination order on the ground that dispute on charter of demands registered as Ref. no. IT/79/96 was pending before this Tribunal when his services were terminated and since he was interested and concerned in the said dispute the employer ought to have filed approval application or permission application before the tribunal Sec. 33(1) of the Industrial Dispute's Act, 1947 deals with filing of the permission application before the Tribunal when the employer wants to dismiss or discharge a workman for misconduct connected with the dispute during the pendency of an industrial dispute before the Tribunal in which the workman is concerned and Sec. 33(2) deals with the filing of the approval application before the Tribunal when the employer dismisses or discharges a workman for misconduct not connected with the dispute during the pendency of an industrial dispute before the Tribunal in which the workman is concerned. As per the provisions of Sec. 33(1) and (2) the dismissal or discharge of the workman has to be for misconduct. Thus Sec. 33(1) or (2) of the Industrial Disputes Act comes into play only when there is dismissal or discharge of the workman for misconduct during the pendency of the industrial dispute in which the workman is concerned. In the present case the termination of the service of the workman was not for any misconduct connected with the dispute or not connected with dispute. The services of the workman in the present case were retrenched. Therefore there was no question of filing permission application or approval application before the Tribunal. I, therefore hold that there is no substance in the contention of the workman that the termination of his service by the employer is illegal because no approval application or permission application was filed.

12. It has been however held by me that the employer has failed to comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 because no retrenchment compensation was paid to the workman at the time when his services were terminated. In view of the law laid down by the Supreme Court in M/s. Avon Services Production Agency Pvt. Ltd., (Supra) and Gammon India Ltd., (Supra) such termination is illegal and unjustified. I therefore hold that the workman has succeeded in proving that termination of his services by the employer with effect from 1-8-2001 is illegal and unjustified. I therefore answer the issue no. 2 in the affirmative. It has been held by me that the employer has failed to prove that the termination of the services of the workman is on account of the closure of the fair price shop where the workman was working.

13. *Issue No. 4:* The employer in the written statement had denied that the workman is unemployed. The employer had stated that the workman has purchased a goods rickshaw and that he is engaged in the said business. The burden was on the employer to prove this fact. The employer however, allowed the case to proceed ex-parte against it. There is no evidence whatsoever from the employer nor the workman has been cross--examined. I therefore hold that the employer has failed to prove that the workman is self employed. In the circumstances, I answer the issue no. 4 in the negative.

14. *Issue No. 5:* this issue pertains to the relief to be granted to the workman. The Bombay High Court in the case of Sayyad Anwar V/s Divisional Controller, MSRTC Aurangabad and other reported in 2000 (2) Bom. L.C. 388 has held that it is well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages must follow, unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. Therefore the ordinary or the normal rule is that when the termination of service of a workman is held to be illegal and unjustified he is entitled to reinstatement in service with full back wages and continuity of service unless there are reasons which do not warranty reinstatement or full back wages. These reasons should be just and reasonable. In the present case, I do not find any reasons to deviate from this normal rule. There is no evidence on record to show that the past conduct of the workman was not good or that he was gainfully employed form the date of termination of his service. In circumstances, I hold that the workman is entitled to reinstatement in service with full back wages and continuity of service and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Madgaon Consumers Co-operative Society Ltd., Margao, in terminating the services of Shri Salvador Pacheco, weighman with effect from 1-8-2001 is illegal and unjustified. Shri Salvador Pacheco is ordered to be reinstated in service with full back wages and continuity of service and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28-1-2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 7-5-2004 in reference No. IT/20/1990 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 1st June, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/20/90

Shri Shivaji Bhalerao,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
Kamaskhi Kripa,
Gr. Floor, Khaddappa Bandh,
Ponda-Goa. ... Workman/Party I

V/s

The Managing Director,
Goa Steel Rolling Mills Pvt. Ltd.,
Bicholim-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri B. Harmalkar.

Employer/Party II - Represented by Adv. Shri A.V. Nigalye.

Dated: 7-5-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13-6-1990 bearing No. 28/18/90-LAB referred the following dispute for adjudication of this Tribunal.

> "Whether the action of the management of M/s. Goa Steel Rolling Mills Private Limited, Bicholim, Goa in terminating the services of their workman Shri Shivaji Bhalerao, with effect from 1-7-1989 is legal and justified ?
>
> If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/20/90 and registered A/D notice was issued to the parties. In pursuance to the said notice the paries put in their appearance. The workman/party I (for short, "workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was charge sheeted along with other two workers alleging that he had assaulted their workman on 8-4-1989. That the workman replied to the said charge sheet denying the allegation and thereafter inquiry was held against him. The workman contended that the inquiry officer was bias against him and he did not follow the proper procedure of inquiry. The workman contended that the findings given by the inquiry officer are perverse and contrary to the evidence on record. The workman contended that when his services were terminated the dispute on charter of demands was pending before this Tribunal and hence termination order is bad in law. The workman therefore prayed that he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that the past record of the workman was not satisfactory and he was given warnings several times. The employer stated that on 8-4-1989 complaint was received from workman Shri Rajan Panikar that he was assaulted by the workman with the help of other four workers and therefore the workman was charge sheeted along with the other four workers and an inquiry was held against him The employer stated that on receipt of the findings from the inquiry officer a Show Cause Notice dated 15-6-1989 was issued to the workman to show cause why he should not be dismissed from service. The employer stated that on receipt of the reply from the workman the employer decided to discharge the workman instead of dismissing him and accordingly the workman was discharged from 30-6-1989. The employer denied that the dispute on charter of demands was pending before the Tribunal when the services of the workman were terminated. The employer denied that the inquiry officer did not follow proper procedure of inquiry or that he was bias against the workman. The employer stated that the workman fully participated in the inquiry and he was given full opportunity to defend himself in the inquiry. The employer denied that the findings of the inquiry officer are perverse or contrary to the evidence on record. The employer stated that the termination of services of the workman is legal and justified and he is not entitled to any relief.

4. The workman therefore filed rejoinder. On the pleadings of the parties the issues were framed at Exb. 8 and since the issue No. 1 was pertaining to the fairness of the inquiry conducted against the workman, it was treated as preliminary issue and the parties led evidence on the said issue. By findings dated 26-9-1995 this Tribunal held that the inquiry conducted against workman is fair and proper and the parties were directed to lead evidence on other remaining issues. Thereafter it was brought to the notice of this Tribunal that no issue was framed on the perversity of the findings of the Inquiry Officer and accordingly on 3-3-1998 additional issue No. 1(A) was framed on the perversity of the findings of the Inquiry Officer and the case was fixed for hearing arguments of the said issue. At this stage the parties submitted that they are trying to arrive at an amicable settlement and accordingly at the request of the parties the case was fixed for filing the terms of settlement before this tribunal. Accordingly on 29-3-2004 the parties appeared and submitted that the dispute between them is amicably settled and they filed the terms of settlement dated 29-3-2004 at Exb. 15. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and their respective Advocates. I am satisfied that terms of settlement are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 29-3-2004 Exb. 15.

ORDER

1. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I

a sum of Rs. 56,820/- (Rupees fifty six thousand eight hundred and twenty only) in full and final settlement of his claim in the above Reference No. IT/20/89.

2. The aforesaid sum of Rs. 56,820/- (Rupees fifty six thousand eight hundred and twenty only) shall be paid by the Employer/Party II to the Workman/ /Party I in six equal monthly installments beginning from May, 2004 & ending in October, 2004. Each of the said installments shall be paid in the manner stated in Clause No. 3 hereinbelow.

3. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit, Bicholim Branch:-

Cheque No.	Date which the cheque bears	Amount
1. 09143	15-05-2004	Rs. 9,470=00
2. 09144	15-06-2004	Rs. 9,470=00
3. 09145	15-07-2004	Rs. 9,470=00
4. 09146	15-08-2004	Rs. 9,470=00
5. 09147	15-09-2004	Rs. 9,470=00
6. 09148	15-10-2004	Rs. 9,470=00
		Rs. 56,820=00

The Workman/Party I admits and acknowledges the receipts of the aforesaid cheques.

4. The Workman/Party I hereby undertake that he will quit and vacate the residential premises allotted to him by the Party II at Bicholim, Goa and hand over the peaceful possession thereof to the Employer/Party II.

5. In the event of the Workman/Party I fails to vacate the said residential premises on or before 10-10-2004 he shall be liable to pay to the Employer/Party II a sum of Rs. 100/- (Rupees one hundred only) per day for the delay of each day in vacating the premises from 11-10-2004 till the date he vacates the same and hand over vacant peaceful possession thereof to the Employer/Party II. The Party II shall also be entitled to stop the payment of the last cheque dated 15-10-2004 in the event the Workman/Party I fails to vacate the said premises as aforesaid.

6. The parties hereby declare that their dispute in Reference No. IT/20/89 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim, and/or demand of whatsoever nature against each other.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28-1-2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 10-5-2004 in reference No. IT/63/1995 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 1st June, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/63/95

Shri Ramu Lokhande,
Represented by,
The General Secretary,
Gomantak Mazdoor Sangh,
Kamaskhi Krupa,
Ground Floor,
Khadapabandh,
Ponda-Goa. ... Workman/Party I

V/s

M/s. Goa Steel Rolling Mills Ltd.,
Bicholim-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri P. Gaonkar.

Employer/Party II - Represented by Adv. Shri A.V. Nigalye.

Panaji, dated 10-5-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 2-11-95 bearing No. 28/52/95-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Goa Steel Rolling Mills Pvt. Ltd., Bicholim, Goa, in terminating the services of Shri Ramu Lokhande, Kundiwala, with effect from 10-12-92 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/63/95 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the

workman are that he was employed with the Employer/ /Party II (for short "employer") as "Kundiwala" in the year 1980 and he was in continuous service till 9-12-1992. That the workman was refused employment by the employer from 10-12-1992 but at the time of refusal of employment his legal dues were not paid nor inquiry has been conducted against him. That the workman is unemployed from the date of refusal of employment to him. The workman contended that termination of his services by the employer by refusal of services to him is illegal, unjustified and bad in law. The workman therefore prayed that the employer be directed to reinstate him in service with full back wages.

3. The employer filed written statement at Exb. 5. By way of preliminary objection the employer stated that the reference made by the Government is bad in law. The employer stated that there was/is no industrial dispute in existence between the workman and the employer in relation to the matter mentioned in the schedule of order of reference. The employer stated that the dispute referred is not an industrial dispute nor this Tribunal has jurisdiction to entertain and decide the reference. The employer stated that the workman was performing the work of "Kundiwala" and "Fireman" in rotation every alternate week that is, as Kundiwala for one week and as Fireman for the following week. The employer stated that the past service records of the workman were bad and he was negligent in his duties, not punctual, irregular in attendance and he indulged in other acts of misconduct for which he was issued memos and warning letters. The employer denied that the workman was refused employment and hence the question of payment of legal dues or conducting any inquiry against him did not arise. The employer stated that the workman abandoned the services from 14-12-1992. The employer denied that the workman is unemployed and stated that the workman is gainfully employed. The employer stated that without prejudice to its contention that the workman had abandoned his services, the employer crave leave to lead evidence on the misconducts committed by the workman as mentioned in the letters dated 10-10-1992 and 17-12-1992 which are major misconducts as per the standing orders applicable to the establishment to employer. The employer stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties issues were framed at Exb. 7 and thereafter the evidence of the workman was recorded. After the workman had closed his evidence the case was fixed for recording the evidence of the employer. Before the evidence of the employer was recorded the employer filed an application seeking to amend the written statement to the effect that the factory of the employer is closed with effect from 31-12-2000. After hearing the parties this Tribunal passed order dated 20-2-2002 allowing the amendment application. Thereafter additional issue was framed at Exb. 14 and the case was fixed for recording the evidence of the employer. At this stage parties submitted that they are trying to arrive at an amicable settlement. At the request of the parties the case was fixed on 29-3-2004 for filing the terms of the settlement. Accordingly on this date the parties along with their representatives appeared and they filed the terms of settlement dated 29-3-2004 at Exb. 15. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and their representatives. I am satisfied that the said terms are in the interest of the workman. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 29-3-2004 Exb. 15.

ORDER

1. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I a sum of Rs. 61,200/- (Rupees sixty one thousand two hundred only) in full and final settlement of his claim in the above Reference No. IT/63/96.

2. The aforesaid sum of Rs. 61,200/- (Rupees sixty one thousand two hundred only) shall be paid by the Employer/Party II to the Workman/Party I in six equal monthly installments beginning from May, 2004 & ending in October, 2004. Each of the said installment shall be paid in the manner as stated in Clause No. 3 hereinbelow.

3. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit, Bicholim Branch:-

	Cheque No.	Date which the cheque bears	Amount
1.	09125	15-05-2004	Rs. 10,200=00
2.	09126	15-06-2004	Rs. 10,200=00
3.	09127	15-07-2004	Rs. 10,200=00
4.	09128	15-08-2004	Rs. 10,200=00
5.	09129	15-09-2004	Rs. 10,200=00
6.	09130	15-10-2004	Rs. 10,200=00
			Rs. 61,200=00

The Workman/Party I admits and acknowledges the receipts of the aforesaid cheques.

4. The Workman/Party I hereby undertake that he will quit and vacate the residential premises allotted to him by the Party II at Bicholim, Goa and hand over the peaceful possession thereof to the Employer/Party II.

5. In the event of the Workman/Party I fails to vacate the said residential premises on or before 10-10-2004, he shall be liable to pay to the Employer/Party II a sum of Rs. 100/- (Rupees one hundred only) per day for the delay of each day in vacating the premises from 11-10-2004 till the date he vacates

the same and hand over vacant peaceful possession thereof to the Employer/Party II. The Party II shall be entitled to stop the payment of the last cheque dated 15-10-2004 in the event the Workman/Party I fails to vacate the said premises as aforesaid.

6. The parties hereby declare that their dispute in Reference No. IT/63/96 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim, and/or demand of whatsoever nature against each other.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28-1-2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 10-5-2004 in reference No. IT/16/1991 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 1st June, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/16/91

Shri Ramkrishna Ambre,
represented by,
Shri P. Gaonkar,
The General Secretary,
Gomantak Mazdoor Sangh,
Kamaskhi Krupa,
Ground Floor,
Khadapa bandh,
Ponda-Goa. ... Workman/Party I

V/s

M/s. Goa Steel Rolling Mills Ltd.,
Radhakrishna Industrial Estate,
Bicholim-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri B. Harmalkar.

Employer/Party II - Represented by Adv. Shri A.V. Nigalye.

Panaji, dated 10-5-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes, Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9-4-91 bearing No. 28/10/91-LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Goa Steel Rolling Mills Limited, Bicholim, Goa, in terminating the services of Shri Ramkrishna Ambre with effect from 30-6-1990 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/16/91 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/ /Party II (for short "employer") as a tongsman in the month of July, 1989, and his services were terminated by the employer without holding any inquiry by letter dated 30-6-1990. That before termination of his services the employer did not comply with the section 25-N of the Industrial Disputes Act, 1947. That a dispute on charter of demands between the workmen and the employer was referred to this Tribunal which was registered under IT/80/1989. That the employer dismissed the workman from service during the pendency of the said dispute without taking permission from this Tribunal thereby contravening the provisions of section 33 of the Industrial Disputes Act, 1947. That the action of the employer of dismissing the workman from service amounts to illegal retrenchment as it violates section 25F of the Act. The workman contended that termination of his services is illegal and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 7. The employer stated that the workman was employed as a tongsman and he was kept on probation for a period of six months from 16th January, 1990. The employer stated that the services of the workman during the probationary period were not found satisfactory and therefore his services were terminated from 30-7-1990 and he was offered one month's wages along with the compensation and other dues. The employer stated that the services of the workman were terminated in terms of the appointment letter and not by way of disciplinary action nor by way of retrenchment. The employer stated that the services of the workman were terminated as a result of non-renewal of the service contract. The employer denied that the termination of the services of the workman is illegal and unjustified. The employer denied that the workman is entitled to any relief. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8 and thereafter the evidence of the workman

were recorded. After the evidence of the workman was recorded the case was fixed for recording the evidence of the employer. Before the evidence of the employer was recorded, the employer filed an amendment application seeking to amend the written statement to the fact that the factory of the employer is closed from 31-12-2000. After hearing to the parties, order was passed on 21-11-2001 allowing the amendment application filed by the employer. Thereafter additional issue was framed and the case was fixed for recording the evidence of the employer. The employer submitted that they do not want to lead any evidence in the matter and therefore the evidence of the employer was closed and the case was fixed for hearing final arguments. At this stage the parties submitted that they are trying to arrive at an amicable settlement and at the request of the parties the case was fixed on 29-3-2004 for filing the terms of the settlement. On this date the parties appeared and filed the terms of the settlement dated 29-3-2004 at Exb. 15. The parties prayed that consent award be passed in terms of the said settlement. I have gone through the terms of the settlement which are duly signed by the parties and their respective advocates. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore accept the submission made by the parties and pass the consent award in terms of the settlement dated 29-3-2004 Exb. at 15.

ORDER

1. It is agreed by and between the parties that the Employer/Party II shall pay to the Workman/Party I a sum of Rs. 62,940/- (Rupees sixty two thousand nine hundred and forty only) in full and final settlement of his claim in the above Reference No. IT/16/91.

2. The aforesaid sum of Rs. 62,940/- (Rupees sixty two thousand nine hundred and forty only) shall be paid by the Employer/Party II to the Workman/ /Party I in six equal monthly installments beginning from May, 2004 & ending in October, 2004. Each of the said installments shall be paid in the manner stated in Clause No. 3 hereinbelow.

3. The Employer/Party II has issued to the Workman/ /Party I today the following crossed post-dated cheques drawn on Deendayal Nagari Pat Saunstha Maryadit, Bicholim Branch:-

	Cheque No.	Date which the cheque bears	Amount
1.	09107	15-05-2004	Rs. 10,490=00
2.	09108	15-06-2004	Rs. 10,490=00
3.	09109	15-07-2004	Rs. 10,490=00
4.	09110	15-08-2004	Rs. 10,490=00
5.	09111	15-09-2004	Rs. 10,490=00
6.	09112	15-10-2004	Rs. 10,490=00
			Rs. 62,940=00

The Workman/Party I admits and acknowledges the receipts of the aforesaid cheques.

4. The Workman/Party I hereby undertake that he will quit and vacate the residential premises allotted to him by the Party II at Bicholim, Goa and hand over the peaceful possession thereof to the Employer/Party II.

5. In the event the Workman/Party I fails to vacate the said residential premises on or before 10-10-2004, he shall be liable to pay to the Employer/Party II a sum of Rs. 100/- (Rupees one hundred only) per day for the delay of each day in vacating the premises from 11-10-2004 till the date he vacates the same and hand over vacant peaceful possession thereof to the Employer/Party II. The Party II shall also be entitled to stop the payment of the last cheque dated 15-10-2004 in the event the Workman/Party I fails to vacate the said premises as aforesaid.

6. The parties hereby declare that their dispute in Reference No. IT/16/91 and all other disputes are conclusively settled with the signing of this settlement and they have no dispute, claim, and/or demand of whatsoever nature against each other.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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